

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ENIO ZARAGOZA SANTA CRUZ,

Petitioner,

v.

WARDEN, U.S.P. LOMPOC,

Respondent.

No. 2:23-cv-0940 CKD P

ORDER AND

FINDINGS AND RECOMMENDATIONS

On August 18, 2023, petitioner's petition for a writ of habeas was dismissed with leave to amend. Petitioner was warned the failure to file an amended petition would result in a recommendation that this action be dismissed. The time provided to petitioner to file an amended petition has expired and petitioner has not filed an amended petition.

Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a district court judge to this case; and

IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice. See Local Rule 110; Fed. R. Civ. P. 41(b).

These findings and recommendations are submitted to the United States District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days after being served with these findings and recommendations petitioner may file written objections with the court. Such a document should be captioned "Objections to Magistrate Judge's Findings

1 and Recommendations.” In his objections petitioner may address whether a certificate of
2 appealability should issue in the event he files an appeal of the judgment in this case. See Rule
3 11, Federal Rules Governing Section 2254 Cases (the district court must issue or deny a
4 certificate of appealability when it enters a final order adverse to the applicant). Where, as here, a
5 habeas petition is dismissed on procedural grounds, a certificate of appealability “should issue if
6 the prisoner can show: (1) ‘that jurists of reason would find it debatable whether the district court
7 was correct in its procedural ruling;’ and (2) ‘that jurists of reason would find it debatable
8 whether the petition states a valid claim of the denial of a constitutional right.’” Morris v.
9 Woodford, 229 F.3d 775, 780 (9th Cir. 2000) (quoting Slack v. McDaniel, 529 U.S. 473, 484
10 (2000)). Petitioner is advised that failure to file objections within the specified time may waive
11 the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

12 Dated: October 25, 2023



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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